

## REMARKS

Reconsideration and allowance of the claims are requested in view of the above amendments and the following remarks. Claims 1-12 and 25 have been canceled. Claims 13 and 14 have been amended. Claims 26-40 have been added as new claims. Support for the claim amendments and new claims may be found throughout the specification. No new matter has been added.

Upon entry of the amendments, claims 13-24 and 26-40 will be pending in the present application with claims 13, 32, 36, 38, 39 and 40 being independent.

### Interview

On December 4, 2007, the undersigned participated in a phone interview with Examiner Dixon and Examiner Shaikh. The undersigned would like to thank the examiners for the opportunity to participate in the phone interview regarding this application. The parties discussed the current application and the applicability of Daughtery to the pending claims. No agreement was reached during the interview.

### Section 102 Rejections

In the Office Action, claims 1, 3, 6-9, 12-13, 15, 18-20 and 24-25 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. patent 6,263,321 to Daughtery III. Claims 1, 3, 6-9, 12 and 25 have been canceled. In response, Applicants traverse the rejections for the pending claims as follows.

Independent claim 13, as amended, is directed to a method of issuing a financial unit that comprises both (1) a remarketable security and (2) a forward contract. The remarketable security “secures performance of obligations of the forward contract” and has “an issue denomination and

a maturity date later than the settlement date" of the forward contract. The forward contract "requir[es] a holder to purchase a quantity of common stock from an issuer at a settlement price on or before a settlement date."

Claim 13 was rejected as being anticipated by Daughtery. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *See* MPEP § 2131. Here, Daughtery fails to anticipate amended claim 13 for at least three reasons:

**First**, Daughtery does not disclose a financial unit comprised of both a forward contract and a remarketable security. Rather, Daughtery involves "an apparatus and process for automatically calculating options for use in a variety of markets, such as commodities or securities markets." *See* Daughtery at col. 1, lines 14-17. Daughtery discloses many different types of financial instruments for which his calculator could be used, but Daughtery nowhere discloses a financial unit that comprises two types of financial instruments, much less the claimed forward contract and remarketable security.

**Second**, in a related point, Daughtery does not disclose a "remarketable security having an issue denomination and a maturity date later than the settlement date" of the forward contract. Indeed, because Daughtery fails to disclose a hybrid unit comprising both a forward contract and a remarketable security, it cannot and does not disclose such a hybrid unit where the maturity date of the remarkable security is after the settlement date of the forward contract.

**Third**, Daughtery fails to disclose a remarketable security that has a remarketing denomination different from the issue denomination, as recited in amended claim 13. The term "denomination" refers to the stated value (e.g., par value) of a security, in this case, the remarketable security. Thus, according to the claim, the issue denomination of the remarketable security is different from the denomination of the remarketable security at the time of the

remarketing. Daughtery does not disclose this element of claim 13. The Office cites, at page 4 of the Office Action, column 22, lines 60-63 of Daughtery as disclosing this limitation. This passage of Daughtery states:

Remarketed Reset Note: Interest rate resets at end of period to a rate remarketing agent determines will make the notes worth par.

Clearly, this passage does not disclose a remarketable security that has a remarketing denomination different from the issue denomination. Rather, it discloses that the interest rate of a remarketed note may be reset. Interest rates are not the same as denominations. An interest rate is generally understood to be the effective return paid on borrowed money as a percentage of the sum borrowed. This is entirely different from a change in denomination of a security, as recited in claim 13. Therefore, Daughtery does not disclose this feature of amended claim 13.

For at least these reasons, applicants submit that Daughtery fails to disclose all of the elements of amended claim 13, as well as claims 14-24 and new claims 26-31, which depend, directly or indirectly, from claim 13. In addition, new claim 38 is also not anticipated by Daughtery for reasons analogous to those given above for claim 13.

With respect to new claims 32-35 and 39, Daughtery fails to anticipate these claims for the first two reasons stated above for claim 13. Daughtery also fails to anticipate claims 32-35 and 39 because Daughtery fails to disclose a remarketable security that has a remarketing coupon frequency that is different from an issue coupon frequency. Specifically, claim 32 recites as one of its steps:

offering, at a remarketing time, the remarketable security to one or more new investors at a remarketing coupon frequency different from an issue coupon frequency, wherein the unit provides the remarketing coupon frequency at time of issue.

The “coupon frequency” in this claim refers to the frequency at which the coupons on the security are due or made. For example, the coupon frequency at issue could be quarterly and the

coupon frequency at remarketing could be semi-annually. *See* paragraph [0035] of the present application. The Office cites column 23, lines 4-5 of Daughtery as disclosing this limitation. This passage of Daughtery concerns variable coupon rates for renewable notes; it does not concern coupon frequencies, as recited in claim 32 (and claim 39). In particular, this passage of Daughtery states:

Variable Rate Renewable Notes: Coupon rate varies monthly until investor terminates.

Daughtery at col. 23, lines 4-5. The coupon rate discussed in this passage of Daughtery is similar to the interest rate discussed above for claim 13. This is entirely different from the coupon frequency recited in claim 32, which pertains to the rate at which the coupons become due. Therefore, claims 32-35 and 39 are not anticipated by Daughtery.

Finally, Daughtery fails to anticipate new claims 36-37 and 40 for at least the first two reasons discussed above for claim 13. Further, Daughtery fails to anticipate claim 36 because Daughtery fails to disclose a remarketable security that eliminates a previously available interest rate deferral option to the issuer. In particular, claim 36 recites as one of its steps:

offering, at a remarketing time, the remarketable security to one or more new investors without a previously available interest rate deferral option to the issuer.

The Office cites column 23, lines 4-5 of Daughtery as disclosing this limitation. As noted above, however, this passage pertains to variable coupon rates for renewable notes. In contrast, claim 36 concerns removing the “previously available interest deferral option to the issuer.” As disclosed in paragraph [0036] of the present application, “[t]o make the remarketable security 12 attractive to debt investors, therefore, the unit 10 may provide that the remarketable security 12 is to be remarketed without subordination to senior debt of the issuer and/or without a previously

available interest rate deferral option to the issuer.” Applicants submit that Daughtery fails to disclose this feature.

For at least these reasons, claims 36-37 and 40 are not anticipated by Daughtery.

### **Section 103 Rejections**

Claims 2, 14 and 16 stand rejected under 35 U.S.C. §103(a) as obvious in view of a proposed combination of Daughtery and a published U.S. patent application U.S. Pub. No. 2004/0193536A1 to Marlowe-Noren. Claim 2 has been canceled.

Claims 14 and 16 are not obvious in view of Daughtery and Marlowe-Noren. As detailed above, Daughtery does not teach or suggest all of the features of the independent claims from which claims 14 and 16 depend. Further, Marlowe-Noren does not remedy the defects of Daughtery as an anticipating reference for claim 13. Therefore, claims 14 and 16 are not obvious in view of the cited references. *See* MPEP § 2143.03 (“If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

The new claims are also not obvious in view of the combination of Daughtery and Marlowe-Noren for similar reasons.

### CONCLUSION

Applicant respectfully submits that all of the claims presented in the present application are in condition for allowance. Applicant's present Response should not in any way be taken as acquiescence to any of the specific assertions, statements, etc., presented in the Office Action not explicitly addressed herein. Applicant reserves the right to specifically address all such assertions and statements in subsequent responses. Applicant also reserves the right to seek claims of a broader or different scope in a continuation application.

Applicant has made a diligent effort to properly respond to the Office Action and believes that the claims are in condition for allowance. If the Examiner has any remaining concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,



\_\_\_\_\_  
Mark G. Knedeisen  
Reg. No. 42,747

Date: December 12, 2007

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS, LLP  
Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, Pennsylvania 15222

Ph. (412) 355-6342  
Fax (412) 355-6501